

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PUBLIC HEARING ON
RULE I concerning audit data storage)	PROPOSED ADOPTION AND
devices and the amendment of ARM)	AMENDMENT
23.16.1802 concerning definitions and)	
ARM 23.16.1827 concerning record)	
keeping requirements)	

TO: All Concerned Persons

1. On January 7, 2009, at 11:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 30, 2008, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I AUDIT DATA STORAGE DEVICES (1) The department may approve a VGM (video gambling machine) utilizing an ASD (audit storage device) for use in place of duplicate printed audit tapes. Each VGM providing ASD support must operate in the following manner:

- (a) the ASD must have a minimum capacity of 2GB;
- (b) at a minimum, record information on the ASD as required in ARM 23.16.1901(1)(d)(vii) and(xi) as defined by the department;
- (c) at a minimum, maintain current record of \$\$IN, \$\$PL, \$\$WN, \$\$PD electronic meters as defined by department;
- (d) utilize directory and file layout specifications for all ASD data as provided by the department;
- (e) retain ASD data records for a minimum of four quarters;
- (f) record required data and confirm in real time;
- (g) the ASD must reside in a locked area within the VGM;
- (h) each record stored on the ASD must be digitally signed as defined by the department;
- (i) the department will administer the distribution of private encryption keys to manufacturers as defined by the department;

- (j) the department must be able to authenticate records through the use of external software utility and public encryption keys as defined by the department;
- (k) game play will be suspended when:
 - (i) an ASD is not present;
 - (ii) communication with an ASD is lost;
 - (iii) data written to an ASD does not conform to file conventions and cannot be corrected by the VGM;
 - (iv) the ASD has insufficient memory to record the largest record possible;
 - (v) a newly installed ASD has unexpected files, directories, or contains files from a machine with a different VGMID;
- (l) ASD data should not be cleared during a Lifetime Memory Clear;
- (m) ASD Data must be displayed on VGM via use of the audit key; and
- (n) ASD data must display externally on personal computers using common applications such as Word or Excel.

AUTH: 23-5-621, 23-5-637, MCA
IMP: 23-5-112, 23-5-115, 23-5-616, 23-5-621, 23-5-628, 23-5-637,
MCA

RATIONALE AND JUSTIFICATION: The proposed amendment is reasonable and necessary because it will allow video gambling machine (VGM) manufacturers to replace impact printers with digital data storage devices for recording audit ticket and ticket voucher data. Current rules specify that VGMS contain impact printers in order to print duplicate audit tapes, i.e., audit tickets and ticket vouchers, to satisfy the record keeping requirements of the department. This duplication of printed audit tapes is accomplished by impact printers that create carbon copies on dual layer paper tapes. The tapes are bulky and heavy, and the retention requirements for those records can be burdensome.

Montana manufacturers of VGMS argue that only a few companies currently manufacture impact printers, and continued supply and after-sales support for the impact printers is uncertain. VGM manufacturers propose the substitution of the printed duplicate audit tapes and the impact printer, with digital data storage devices (commonly referred to as thumb drives). These devices will serve as an alternative method to preserve the records as currently required, but in an electronic digital format rather than on paper medium.

The rule establishes technical standards regarding data security and storage capacity that are designed to assure accurate collection, retention, and reporting of VGM audit tape data.

The department has evaluated the proposal to use ASD as a suitable replacement for the impact printers. The department believes the digital recordation of audit tape data can be done efficiently and securely, and satisfies its requirements for records duplication and retention. A digital record will eliminate the onerous storage requirements currently required for the paper audit tape rolls, and will ease the

burden of data retrieval and evaluation if it becomes necessary for the department to conduct an examination or audit of the VGM records.

The department believes digital records stored to an ASD will serve to achieve the goals expressed by the Legislature when it authorized use of approved automated accounting and reporting systems in 23-5-637, MCA, including to: minimize regulatory costs, simplify the reporting of video gambling machine revenue data, lessen administrative and record keeping burdens for machine owners and operators, and enhance the management tools available to the industry and the state.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

23.16.1802 DEFINITIONS (1) and (2) remain the same.

(3) "ASD" (audit storage device) means a removable, portable, nonvolatile, electronic, memory storage device that is compatible with a standard port on a personal computer and is used to store electronic records of audit tapes.

(3) through (26) remain the same but are renumbered (4) through (27).

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603,
23-5-610, 23-5-612, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: It is reasonable and necessary to amend this rule to provide a definition of the acronym "ASD." The acronym derives from the adoption of NEW RULE I that authorizes use of digital data storage devices in video gambling machines, and from amendment to ARM 23.16.1827 that provides storage retention requirements for VGMs using ASD for the collection and retention of those records. The department concluded that maintaining definitions within a single rule eliminates redundancy and lessens confusion among readers.

23.16.1827 RECORD KEEPING REQUIREMENTS (1) remains the same.

(2) Except as provided in (4), ~~Records~~ to be maintained by machine owners continuing to file reports and maintain records manually and those using tier II automated accounting and reporting systems must include:

(a) through (4) remain the same.

(a) machine owners who continue to file reports and maintain records manually must retain those records a minimum of 12 full quarters from the previous quarterly report due date; and

(b) machine owners using a tier I or tier II system must maintain records for a period of four quarters; and

~~(c) machine owners using a tier II system must maintain records for a period of eight quarters.~~

(5) Records to be maintained by machine owners on machines with approved audit storage devices (ASD units) must include:

(a) all video gambling machine records required pursuant to [NEW RULE I] either on the original ASD device or other electronic media which allow for retrieval and review or transmittal to the department for review; and

(b) all other machine records as required in (2)(c), (d), and (e).

(5) and (6) remain the same but are renumbered (6) and (7).

AUTH: 23-5-115, 23-5-621, 23-5-637, MCA

IMP: 23-5-115, 23-5-136, ~~23-5-605~~, 23-5-610, 23-5-621, 23-5-628, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The department concludes it is reasonable and necessary to amend this rule because it reduces to four quarters the record retention period for video gambling machine (VGM) audit tape records, i.e., audit tickets and voucher tickets, for those VGM owners that report VGM tax data using a tier II automated accounting and reporting system. The amendment will make the retention period for tier II system reporting equal to the retention period for tier I system reporting, as provided for in this rule. The department concluded the reduced retention period is warranted because the automated system requires a numerical reconciliation of the submitted data, and the department's subsequent evaluation of the reported data will be faster and less cumbersome. The amendment achieves the goals articulated in 23-5-637, MCA, when the Legislature authorized the use of approved automated accounting and reporting systems, including to: minimize regulatory costs, simplify the reporting of video gambling machine revenue data, lessen administrative and record keeping burdens for machine owners and operators, and enhance the management tools available to the industry and the state.

The amendment also defines the record keeping process for video gambling machine audit tapes collected and retained through the use of digital data storage devices, or ASD, as authorized under NEW RULE I.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than January 8, 2009.

6. An electronic copy of this Notice of Proposed Adoption and Amendment is available through the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department of Justice works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

8. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State December 1, 2008.